

ASSEMBLY BILL

No. 384

Introduced by Assembly Member Leslie

February 14, 2003

An act to amend Sections 308, 2762, 3326, and 5005 of, and to add Section 5030 to, the Penal Code, and to amend Section 1752.5 of, and to add Section 1712.5 to, the Welfare and Institutions Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 384, as introduced, Leslie. Tobacco products: correctional facilities.

Existing law allows the Director of the Department of Corrections to prescribe and amend rules and regulations for the administration of state prisons. Existing law includes tobacco products among the products that may be authorized for sale to inmates at state prison facilities.

Existing law allows the Director of the Department of the Youth Authority to make and enforce all rules appropriate to the proper accomplishment of the functions of the department, including the correction and rehabilitation of young persons who have committed public offenses. Existing law includes tobacco products among the products that may be authorized for sale to inmates at Youth Authority facilities.

This bill would require the directors of the Department of Corrections and the Department of the Youth Authority to adopt regulations prohibiting the possession of tobacco products by inmates in state prison and Youth Authority facilities. It would eliminate tobacco products from the list of items that may be sold at those facilities.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 308 of the Penal Code is amended to
2 read:

3 308. (a) Every person, firm, or corporation which knowingly
4 or under circumstances in which it has knowledge, or should
5 otherwise have grounds for knowledge, sells, gives, or in any way
6 furnishes to another person who is under the age of 18 years any
7 tobacco, cigarette, or cigarette papers, or any other preparation of
8 tobacco, or any other instrument or paraphernalia that is designed
9 for the smoking or ingestion of tobacco, products prepared from
10 tobacco, or any controlled substance, is subject to either a criminal
11 action for a misdemeanor or to a civil action brought by a city
12 attorney, a county counsel, or a district attorney, punishable by a
13 fine of two hundred dollars (\$200) for the first offense, five
14 hundred dollars (\$500) for the second offense, and one thousand
15 dollars (\$1,000) for the third offense.

16 Notwithstanding Section 1464 or any other provision of law, 25
17 percent of each civil and criminal penalty collected pursuant to this
18 subdivision shall be paid to the office of the city attorney, county
19 counsel, or district attorney, whoever is responsible for bringing
20 the successful action, and 25 percent of each civil and criminal
21 penalty collected pursuant to this subdivision shall be paid to the
22 city or county for the administration and cost of the community
23 service work component provided in subdivision (b).

24 Proof that a defendant, or his or her employee or agent,
25 demanded, was shown, and reasonably relied upon evidence of
26 majority shall be defense to any action brought pursuant to this
27 subdivision. Evidence of majority of a person is a facsimile of or
28 a reasonable likeness of a document issued by a federal, state,
29 county, or municipal government, or subdivision or agency
30 thereof, including, but not limited to, a motor vehicle operator's
31 license, a registration certificate issued under the Federal Selective
32 Service Act, or an identification card issued to a member of the
33 Armed Forces.

34 For purposes of this section, the person liable for selling or
35 furnishing tobacco products to minors by a tobacco vending

1 machine shall be the person authorizing the installation or
2 placement of the tobacco vending machine upon premises he or
3 she manages or otherwise controls and under circumstances in
4 which he or she has knowledge, or should otherwise have grounds
5 for knowledge, that the tobacco vending machine will be utilized
6 by minors.

7 (b) Every person under the age of 18 years who purchases,
8 receives, or possesses any tobacco, cigarette, or cigarette papers,
9 or any other preparation of tobacco, or any other instrument or
10 paraphernalia that is designed for the smoking of tobacco,
11 products prepared from tobacco, or any controlled substance shall,
12 upon conviction, be punished by a fine of seventy-five dollars
13 (\$75) or 30 hours of community service work.

14 (c) Every person, firm, or corporation which sells, or deals in
15 tobacco or any preparation thereof, shall post conspicuously and
16 keep so posted in his, her, or their place of business at each point
17 of purchase the notice required pursuant to subdivision (b) of
18 Section 22952 of the Business and Professions Code, and any
19 person failing to do so shall upon conviction be punished by a fine
20 of ten dollars (\$10) for the first offense and fifty dollars (\$50) for
21 each succeeding violation of this provision, or by imprisonment
22 for not more than 30 days.

23 (d) For purposes of determining the liability of persons, firms,
24 or corporations controlling franchises or business operations in
25 multiple locations for the second and subsequent violations of this
26 section, each individual franchise or business location shall be
27 deemed a separate entity.

28 (e) It is the Legislature's intent to regulate the subject matter of
29 this section. As a result, no city, county, or city and county shall
30 adopt any ordinance or regulation inconsistent with this section.

31 ~~(f) Notwithstanding any other provision of this section, the~~
32 ~~Director of Corrections may sell or supply tobacco and tobacco~~
33 ~~products, including cigarettes and cigarette papers, to any person~~
34 ~~confined in any institution or facility under his or her jurisdiction~~
35 ~~who has attained the age of 16 years, if the parent or guardian of~~
36 ~~the person consents thereto, and may permit smoking by the person~~
37 ~~in any institution or facility. No officer or employee of the~~
38 ~~Department of Corrections shall be considered to have violated~~
39 ~~this section by any act authorized by this subdivision.~~

40 SEC. 2. Section 2762 of the Penal Code is amended to read:

1 2762. The Director of Corrections shall fix a daily rate to be
2 expended for convict labor, and when so fixed, the Department of
3 Transportation shall monthly set aside funds to the director to pay
4 for this labor from funds appropriated in the Budget Act for this
5 purpose, and where no funds are available to the Department of
6 Transportation the director may set aside the department's own
7 funds to pay for this labor from funds appropriated in the Budget
8 Act for this purpose. The Department of Corrections shall set up
9 an account for each convict which shall be credited monthly with
10 an amount computed by multiplying the daily rate by the number
11 of days such convict actually performed labor during the month.
12 Such account shall be debited monthly with the convict's
13 proportionate share of expenses of camp maintenance, including
14 the expenses for food, medicine, medical attendance, clerical and
15 accounting personnel, and the expenses necessary to maintain care
16 and welfare facilities such as camp hospital for first aid,
17 barbershop and cobbler shop, and the convict's personal expenses
18 covering his drawings from the commissary for clothing, toilet
19 articles, ~~tobacco~~, candy, and other personal items. The charge for
20 camp maintenance may be made at a standard rate determined by
21 the department maintaining the camps to be adequate to cover
22 expenses and shall be adjusted periodically at the discretion of the
23 department as needs of the camp require. No charge shall be made
24 against such account for the costs of transporting prisoners to and
25 from prison and camp or for the expense of guarding prisoners,
26 which items shall be paid by the Department of Corrections from
27 appropriations made for the support of the department. The
28 director, by regulation, may fix the maximum amount, over and
29 above all deductions, that a convict may receive. The Department
30 of Corrections, in computing the debits to be made to the convict's
31 accounts, may add not to exceed 10 percent on all items.

32 SEC. 3. Section 3326 of the Penal Code is amended to read:

33 3326. The department is authorized to provide the necessary
34 facilities, equipment, and personnel to operate a commissary at
35 ~~said~~ any institution *under its jurisdiction* for the sale of toilet
36 articles, candy, ~~tobacco products~~, gum, notions, and other
37 sundries.

38 SEC. 4. Section 5005 of the Penal Code is amended to read:

39 5005. The department may maintain a canteen at any prison
40 or institution under its jurisdiction for the sale to persons confined

1 therein of toilet articles, candy, ~~tobacco products~~, notions, and
2 other sundries, and may provide the necessary facilities,
3 equipment, personnel, and merchandise for the canteen. The
4 director shall specify what commodities shall be sold in the
5 canteen. The sale prices of the articles offered for sale shall be
6 fixed by the director at the amounts that will, as far as possible,
7 render each canteen self-supporting. The department may
8 undertake to insure against damage or loss of canteen and
9 handicraft materials, supplies and equipment owned by the Inmate
10 Welfare Fund of the Department of Corrections as provided in
11 Section 5006.

12 The canteen operations at any prison or institution referred to in
13 this section shall be audited biennially by the Department of
14 Finance, and at the end of each intervening fiscal year, each prison
15 or institution shall prepare a statement of operations. At least one
16 copy of any audit report or statement of operations shall be posted
17 at the canteen and at least one copy shall be available to inmates
18 at the library of each prison or institution.

19 SEC. 5. Section 5030 is added to the Penal Code, to read:

20 5030. The Director of Corrections shall adopt regulations
21 prohibiting the possession of tobacco products by inmates in all
22 institutions and prison facilities under the jurisdiction of the
23 Department of Corrections. The regulations shall provide that a
24 violation of this prohibition is a serious rule violation pursuant to
25 Section 3315 of Division 3 of Title 15 of the California Code of
26 Regulations.

27 SEC. 6. Section 1712.5 is added to the Welfare and
28 Institutions Code, to read:

29 1712.5. The Director of the Youth Authority shall adopt
30 regulations prohibiting the possession of tobacco products by
31 inmates in all institutions and camps under the jurisdiction of the
32 Department of the Youth Authority.

33 SEC. 7. Section 1752.5 of the Welfare and Institutions Code
34 is amended to read:

35 1752.5. The director may establish and maintain at any
36 institution or camp under his jurisdiction a canteen for the sale to
37 persons confined therein of candy, nutritional snacks, toilet
38 articles, ~~tobacco products~~, sundries, and other articles. The
39 canteen shall operate on a nonprofit basis. However, if sales should
40 exceed costs, the surplus shall be deposited in a special fund, to be

- 1 designated “Benefit Fund.” Any moneys contained in such fund
- 2 shall be used for the benefit of the wards resident at the institution
- 3 or camp.

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